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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

Mr. William F. Caton
Acting Secretary
Federal Communications Commission
1919 M Street, NW - Room 222
Washington, DC 20554

Attn: Ms. Regina Kenney
Chief, Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, NW - Room 5002
Washington, DC 20554

Re: C Block Auctions, PP Docket No. 93-253

Dear Mr. Caton:

Allied Communications Group, Inc. (Allied) hereby offers its comments on the changes effected in the Commission's Order of June 23, 1995 in the above-captioned matter, Further Notice of Proposed Rule Making, PP Docket No. 93-253, released June 23, 1995. In doing so, Allied wishes the record to reflect its general premise that (i) the changes will likely produce results wholly inconsistent with the directives of the Budget Reconciliation Act of 1993 (Act), and (ii) the changes, coupled with prior modifications, invite subterfuge and shams which, regrettably, will engender torrents of litigation after the C Block auctions have concluded. Neither circumstance is inevitable, and both can be corrected. We urge the Commission to take immediate steps to do so.

1. The Commission Must Reinstate The Cap On Personal Net Worth

On August 10, 1993, the President signed the Budget Act, which amended Sections 3(n), 309(j) and 332 of the Communications Act of 1934. Sections 3(n) and 332 authorized the establishment of a regulatory framework for PCS, while 309(j) authorized the grant of licenses through competitive bidding or auctions.

In authorizing the grant of licenses through competitive bid procedures, Congress mandated that the F.C.C. consider certain threshold objectives in the licensing of PCS, including: (i) rapid deployment of new technologies, (ii) promotion of economic opportunity, (iii) competition and public access, (iv) wide dissemination of licenses, and (v) efficient use of the spectrum.

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The Commission sought to fashion licensing policies which were furtherance of the foregoing Congressional directives. As Allied has stated on various occasions, and though not fully satisfied with the rules, we believed them to be carefully crafted and constitutionally sound.

In its haste to complete these broadband auctions before the end of this calendar year, and in view of its simultaneous grant of licenses to MTA winners, the Commission has unnecessarily rushed to judgment. As a result, it has pushed out the C Block proceeding after striking bid enhancements designed to level the playing field for companies owned by minorities and women.

The F.C.C. states that "[b]ased on the letters we have received from potential bidders,¹ many of whom have made extensive preparations to bid in the C block auction, we conclude that at this time, minority and women bidders, as well as other bidders, will have a better change of becoming successful PCS providers if without we eliminate the race-and gender-based provisions from the C block and adopt provisions based on economic size only." (Order This premise is fraught with problems in view of the Commission's modifications contained in its Order of November 23, 1994, e.g., Fifth Report and Order, PP Docket 93-253, 9 FCC Rcd 5532 (1994) (Fifth R&O), recon. Fifth Memorandum Opinion and Order, 10 FCC Rcd 403 (1994) (Fifth MO&O).

In its Fifth R&O, the Commission spoke to the elimination of the personal net worth caps, as follows:

We will eliminate the personal net worth limits (both for the entrepreneur's blocks and for small business size status) for all applicants, attributable investors, and affiliates.

The obstacles faced by minorities and minority-controlled businesses in raising capital are well-documented in this proceeding and are not necessarily confined to minorities with limited personal net worth.

Fifth R&O at ¶ 30.

¹ This statement appears less than accurate since Allied's comments were directly inapposite the notion that the F.C.C should strike race and gender preferences as part of the C Block licensing.

This action was directly in response to the Commission's use of race and gender enhancements as part of the bid process, and was in response to requests made by, among others, minorities who wished to have the caps relaxed. Thus, it was directly connected to the race and gender preferences.

The Commission subsequently, inexplicably and, sua sponte, eliminated the requirement for all applicants "...because personal net worth limits are difficult to apply and enforce and may be easily manipulated."

Thus, it appears any individual may now step forward and participate in the impending C Block auctions notwithstanding his/her overall net worth. This, of course, will be done under the entrepreneur's block which has been reserved for those not capable of bidding in other areas. One is constrained to ask the unsettling question: are these auctions designed to effectuate a wide dissemination of licenses and efficient use of spectrum, or is the Commission no longer care about the real likelihood of licenses being warehoused.

Deep pockets can easily bid without regard to the real value of licenses on the theory they will hold the licenses until market aggregation begins, and the industry matures, i.e., years five or six). Such a company then sells the license for substantial gain with, at best, only one-third of the system having been constructed.²

The Commission states its belief that the personal net worth limits are difficult to apply and enforce, and may be easily manipulated. The solution it chooses is an abdication of its responsibility, which also ignores Congressional directives -- it simply opens the narrow path of entry as widely as possible under the guise of some litmus test for economic need.

This is wholly inappropriate and must be corrected prior to the commencement of the C Block auctions. The easiest and most appropriate solution is the reinstitution of the personal net worth caps.

² It cannot be argued that the F.C.C.'s construction requirement is a deterrent here since a warehouse specialist could easily meet the Commission's construction timetable by building out the most lucrative (presumed) area and cherry-picking subs and service sectors while awaiting the aggregation phase. Hence, even a partial build-out would cause results inconsistent with the threshold requirement that licensees be granted in a manner to maximize efficient use of the spectrum.

2. The Commission Should Proceed Expeditiously
To Place Additional Evidence In The Record
Vis-a-Vis The Strict Scrutiny Standard Set Out
In Adarand

The Court in Adarand made clear that compelling governmental interests would be required where race and gender based preferences were instituted, and that such preferences would be subjected to "strict scrutiny". The F.C.C. has indicated its intentions to move swiftly to expand the record in order to ensure that the earlier conclusions are wholly supported by record evidence. We urge the Commission to do so, and to act as expeditiously as possible in this regard. Further, we believe it necessary that such further record evidence be the result of some formal study or assessment which is expansive in scope, and one which considers not only existing industries but, more important, those likely to come on-line and the capital intensive nature which presumably will attach to such new license issuances.

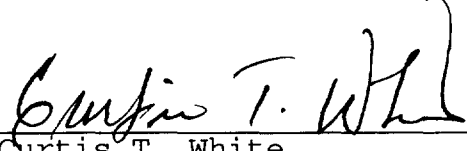
3. Conclusion

For the foregoing reasons, Allied urges the Commission to reinstate the cap for personal net worth for C Block auctions, and that it take expeditious action to expand record evidence supporting the conclusion that race and gender based preferences are both appropriate and constitutionally sound.

Respectfully submitted,

ALLIED COMMUNICATIONS GROUP, INC.

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